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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. ~~1138~~ 74

WALTER L. MANGUS AND ROSE L. MANGUS,
Petitioners,

vs.

MATTHEW A. MILLER.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

J. D. SKEEN,
E. J. SKEEN,
Counsel for Petitioners.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 1138

WALTER L. MANGUS AND ROSE L. MANGUS,
Petitioners,

vs.

MATTHEW A. MILLER.

PETITION FOR WRIT OF CERTIORARI.

The petition of Walter L. Mangus and Rose L. Mangus respectfully shows to the Court:

That on the 3rd day of November, 1938 they contracted to purchase from one James K. Miller, farm lands in Davis County, State of Utah, and to pay therefor the sum of $4000. The said contract described petitioners "as joint tenants with full rights of survivorship and not as tenants in common" (R. 5). Petitioners paid $500 cash at the time of the execution of the contract and installments of $35.00 per month. Petitioners defaulted in making one or more payments on account of the purchase price of the property, for a period of thirty days and on the 30th day of November, 1940, Matthew A. Miller, who had succeeded the seller of the said property to petitioners, served notice upon petitioners, by the terms of which he demanded "that they fully make up and pay on or before January 3, 1941 all payments and other sums which might then be due and owing on said contract by them and that they thereafter, at all times,

strictly pay and perform said contract as the same required them to do and in case of their failure so to do on or before said January 3, 1941, that petitioner (seller) had elected that he would thereupon and without notice or demand, be released of all obligations to convey said property and that said agreement and the buyers' rights, interests and possession in said property would thereupon forthwith terminate and end and be of no further force or effect whatsoever" (R. 5).

On December 28, 1940, petitioner, Walter L. Mangus, filed a petition, after approval, with schedules attached, in the District Court of the United States for the District of Utah, praying for relief under Section 75 of the Bankruptcy Act. On January 27, 1941, Matthew A. Miller filed a motion to strike the real estate covered by the contract of purchase from the debtor's schedules and supported the motion with the affidavit of Matthew A. Miller, setting forth the making of the contract, the descriptions of the land, the default and the notice. On the 4th day of February, 1941, petitioner, Rose L. Mangus, upon leave of court, filed a joinder in the proceedings of her husband, Walter L. Mangus. Thereupon, Matthew A. Miller filed another motion to strike the said property from the schedules, supporting it with an affidavit substantially the same as the original affidavit (R. 6).

On the 24th day of February, 1941, after hearing, the District Court made and entered an order denying the motion to strike (R. 9). Thereupon, Matthew A. Miller appealed to the Circuit Court of Appeals for the Tenth Circuit. The appeal specified as error the denial of the motion to strike the real estate for the reason that the court was "wholly without jurisdiction of said Walter L. Mangus in regard to said joint estate and property" (R. 11-12).

The Circuit Court on rehearing on January 12, 1942, reversed the District Court with instructions to strike the property from the schedules. The opinion of the Circuit

Court of Appeals on rehearing has been published and is set out on page 34 of the record, 125 Fed. (2d) Advance Sheet 3, page 507.

This Court has jurisdiction to review the judgment of the Circuit Court of Appeals under Section 240 of the Judicial Code, 28 U. S. C. A., Section 347, page 359.

The following questions are presented by this petition:

1. Did the Circuit Court of Appeals err in holding that Rose L. Mangus was an indispensable party to the proceeding under Section 75 of the Bankruptcy Act and that her failure to join in the petition in the first instance was fatal to the jurisdiction of the District Court over the property of Walter L. Mangus.

2. Did the Circuit Court of Appeals err in holding that the defect of parties, if any, in the institution of the proceeding was not cured by the subsequent joining of Rose L. Mangus under order of the court.

3. Did the Circuit Court of Appeals err in holding that the rule in general bankruptcy, that whatever interest the bankrupt has is susceptible of administration, is not applicable under the provisions of Section 75 of the Bankruptcy Act.

4. Did the Circuit Court of Appeals err in holding that an undivided one-half interest in the property passed to Miller by the service of notice upon Rose L. Mangus, and that Walter L. Mangus did not have the right to pay the full purchase price of the property and to acquire the full ownership of the real estate, subject only to any equity that Rose L. Mangus, alone, might have had.

5. Did the Circuit Court of Appeals err in holding that "any final order or judgment which the court could make in the premises would be inconsistent with equity, in con-

travention of the Constitutional rights of the parties and contrary to the fundamental purposes of the Bankruptcy Act".

6. Did the Circuit Court of Appeals err in holding that the difficulties presented were insurmountable.

7. Did the Circuit Court of Appeals err in holding that it was not within the Constitutional powers of the Court of Bankruptcy to administer the property of Walter L. Mangus and that neither Walter L. Mangus nor Rose L. Mangus acquired any remedial rights under Section 75 of the Bankruptcy Act.

Date of judgment sought to be reviewed, January 12, 1942.

Date of application for writ of certiorari, March —, 1942.

Respectfully submitted,

J. D. SKEEN,
E. J. SKEEN,
Attorneys for Petitioner.

SUPREME COURT OF THE UNITED STATES

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SUPPORTING BRIEF.

This Court is given authority by Section 240 of the Judicial Code, 28 U. S. C. A., Section 347, page 359, to issue the writ of certiorari in this case.

The writ should be granted because:

The Circuit Court of Appeals has decided an important question of Federal Law, which has not, so far as known, been settled by this Court, and has decided the question in a way in conflict with the applicable decisions of this Court.

Section 75 (n) of the Bankruptcy Act reads:

> "The filing of a petition or answer with the clerk of the court, or leaving it with the conciliation commissioner for the purpose of forwarding the same to the clerk of court, praying for relief under section 75 of this Act, as amended, shall immediately subject the farmer and all his property, wherever located, for all the purposes of this section, to the exclusive jurisdiction of the court, including all real or personal property, or any equity or right in any such property, in-

cluding, among others, contracts for purchase, contracts for deed, or conditional sales contracts, the right or the equity of redemption where the period of redemption has not or had not expired, or where a deed of trust has been given as security, or where the sale has or had not been confirmed, or where deed had not been delivered, at the time of filing the petition."

Subsection (O) (2) enjoins proceedings for the cancellation of the contract.

It will be observed that the proceeding covers "all of his property and it is subject to the exclusive jurisdiction of the court". The Circuit Court has found the estate of Walter L. Mangus was in fact a legal estate "subject to alienation, levy and execution and is therefore susceptible of administration under the General Bankruptcy Law". Wherein does the statute differentiate between an estate subject to administration under the General Law and estates subject to administration under Section 75 of the Act? The estate of Mangus is certainly comprehended by the all inclusive words of the statute. If there could have been any possible question about the statute covering all of the property of the debtor in harmony with its express terms, it is certainly eliminated by the decisions of this Court in *Elizabeth Wright, et al.*, v. *Gusta Logan, et al.*, decided January 9, 1942 reported in Advance Sheet No. 7 of 86 L. Ed. 443. In dealing with the question of the debtor's redemption right, which does not in principle differ from this debtor's contract right, the Court said:

"It is nevertheless appropriate to point out at this time that whatever right of redemption the petitioners had when they first applied for adjudication under Section 75 continued to be a part of their assets subject to administration by the Bankruptcy Court. For 75(n) subjects all of the farmer-debtor assets specifically including rights of redemption to the jurisdiction of the Bankruptcy Court and provides 'that the period of redemption shall be extended for the period necessary for the

purpose of carrying out the provisions of this Section'."

Citing *Wright* v. *Union Central Life Insurance Company*, 304 U. S. 502, 513-516, 82 L. Ed. 1490, 1499-1501, 58 S. Ct. 1025, 26 Am. Bankr. Rep. (NS) 950.

By the express terms of subsection (O), proceedings "for cancellation, rescission, or specific performance of an agreement, for sale of land or recovery of possession of land" are enjoined. Furthermore, this Court has said:

"And so long as that right is protected the creditor certainly is in no position to insist that doubts or ambiguities in the Act be resolved in its favor and against the debtor. Rather, the Act must be liberally construed to give the debtor the full measure of the relief afforded by Congress (John Hancock Mut. L. Ins. Co. *v.* Bartles, supra [308 U. S. 180, 84 L. Ed. 180, 181, 60 S. Ct. 221, 41 Am. Bankr. Rep. (NS) 296] Kalb *v.* Feuerstein, 308 U. S. 433, 84 L. Ed. 370, 60 S. Ct. 343, 41 Am. Bankr. Rep. (NS) 501, supra), lest its benefits be frittered away by narrow formalistic interpretations which disregard the spirit and letter of the Act."

Wright v. *Union Cent. Life Ins. Co.*, 311 U. S. 273, 85 L. Ed. 184.

Nevertheless, the Circuit Court of Appeals has injected into the case an exception to the express words of the statute that if carried to a logical conclusion would, without the slightest justification or support in the decisions of this Court, eliminate many debtor's petitions which come within the very letter of the statute.

It is respectfully submitted that the writ should be granted and the judgment of the Circuit Court of Appeals reversed.

J. D. Skeen,
E. J. Skeen,
Attorneys for Petitioners.

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